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Canada's immigration program

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CANADA'S IMMIGRATION PROGRAM

Margaret Young
Law and Government Division

January 1989
Revised January 1997



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CANADA'S IMMIGRATION PROGRAM

GENERAL

In recent years, a great deal of attention has focused on immigration to Canada. Following a decade in which immigration levels went from a high of 218,465 (in 1974) to a low of 84,302 (in 1985), it became the policy of the government that immigration levels would be increased in a moderate, controlled way in order to reverse the downward trend. This policy of growth, generally supported by all three parties in the House of Commons in the 33rd and 34th Parliaments, saw annual immigration levels exceed 200,000 in the '90s.⁽¹⁾ On the other hand, by 1990, it began to be suggested that Canada's capacity to integrate new arrivals adequately might have been surpassed, that more emphasis should be placed on the selection of immigrants with skills that benefit Canada and that criminality and security concerns were not being adequately addressed. The election to Parliament in 1993 of 52 Reform Party Members ensured that these issues continued to be addressed.

At the same time, negative attention was focused on the stresses and strains placed on the former refugee status determination system and its virtual collapse by the fall of 1988. Increasing backlogs, delays in introducing new legislation and the period of 14 months it took for the restructuring bill to pass through Parliament added to the confusion of officials and the public alike. In his 1990 Report, the Auditor General criticized certain aspects of both the new refugee system and a number of other aspects of the immigration program, particularly as they related to levels management and enforcement and control. In addition, a number of high-profile cases, a significant number involving criminality, ensured that immigration issues were almost continually in the media. In 1992, the *Immigration Act* was extensively amended, not without significant controversy; further amendments followed in 1995 as a result of Bill C-44.

(1) Appendix 1 shows Canadian immigration levels from 1962 to 1996.

Precisely because of the publicity that the topic has received in recent years, many more questions are now being asked relating to immigration. Are immigration levels too high? Are they high enough? What are the demographic implications of immigration? What settlement services are needed for new immigrants? What should be our policy for refugees? What kinds of immigrants are best for Canada? Needless to say, this paper does not answer these questions; the intention is rather to provide a framework whereby readers may become aware of the scope of the immigration program and background information for what can be a very complex area of law and government policy and administration.

THE FRAMEWORK OF THE PROGRAM

The foundation of Canada's immigration program is the *Immigration Act*,⁽²⁾ as amended, and as interpreted by the courts and the Immigration and Refugee Board. Second to this are the regulations, subordinate legislation made by the Governor in Council (i.e., Cabinet) under the authority of the Act. Third are the various components of the Immigration Manual, all but one of which are available to the public. The Manual contains extensive guidelines and instructions to officials administering the program, although the Act or the regulations would prevail in the case of conflict.

Another feature of the legal framework arises from the Act but it is helpful to think of it as a separate yet overriding part - the Minister's permit. The Act (section 37) gives the Minister a broad discretion to authorize people to enter or remain in Canada despite the fact that they do not meet legal requirements. This power has been delegated to various levels of officials in Canada and abroad, depending on the nature of the infraction. Thus, permits may be given to allow medically or criminally inadmissible people to immigrate and to remedy minor violations of the Act or regulations.

A further power to exempt people from the regulations or otherwise facilitate their admission is given to the Governor in Council by section 114(2). This power has been delegated to the Minister and may be exercised "where the Minister is satisfied that the person should be exempted from that regulation or that the person's admission should be facilitated owing to the

(2) R.S.C. 1985, c. I-2.

existence of compassionate or humanitarian considerations." The importance of this power should not be underestimated. It is the mechanism by which the general rule that an immigrant must apply for a visa outside the country can be waived, permitting many people each year to become permanent residents while remaining in Canada.

SETTING IMMIGRATION LEVELS

Section 7 of the Act requires that the Minister table a yearly "Levels Report" to Parliament concerning future immigration levels. The Minister is specifically directed to consult with the provinces and also to consult with "such persons, organizations and institutions as the Minister deems appropriate" prior to tabling the Report.

A. The Five-Year Plan: 1991-1995

The Levels Report released in October 1990 was unprecedented in setting immigration levels for the five-year period from 1991-1995. It followed very extensive consultations with Canadians. The key themes emphasized in the document and in the Minister's statement appeared to respond to certain criticisms of the immigration program: that the program was short-sighted in its scope; that the mix of immigrants had been tipped away from independent applicants chosen for the economic contribution they could make to Canada; that the program, by considerably exceeding its target levels, was not being adequately managed; and that more should be done to integrate immigrants into Canadian society. The immigration levels, the regulatory changes, the management measures, and increased spending on language training announced in the document were all part of an attempt to respond to those issues.

The Report noted the significant pressures on the immigration system from all categories of immigrants: refugees, family class, and independents. Maintaining a balance among these three main groups dictated neither continued growth at the same rate as in the last few years (which would have led to unmanageable levels by 1995) nor to a freeze or cut-back in levels, because that would have meant virtually eliminating independent immigration, long delays, or significant cutbacks to the family class. The choice of the government, therefore, was modest growth for the initial two years (to 1992), levelling off at 250,000 immigrants for each of the

following three years, but with some regulatory changes to affect the mix of immigrants, primarily by slightly scaling back the family class.

Responding to calls that Canada should be more selective with respect to the categories of independent immigrants, the former government made regulatory changes in February and August 1993, whereby the number of points awarded was increased for higher education, training and the official language abilities of independent immigrants (see below, p. 17-19).

B. The Immigration Plan, 1995-2000

The Liberal government elected in 1993 followed the general outline of the existing plan in its Report for 1994, then introduced its own plan for 1995-2000, again following extensive consultations with Canadians. Unlike the plan of the previous government, however, this plan set actual levels only for 1995 and set them by way of a range, rather than a fixed target. Some concerns continued to predominate, including the desire to further scale back the proportion of total immigration devoted to the family class. Immigration levels were reduced slightly for 1995, although the government stated that its long-term goal remained immigration at 1% of Canada's population. Levels were reduced again for 1996 and were to remain stable for 1997 (see Appendix 2).

C. Demographic Concerns

Prior to 1993, the Act required that the Report state "the manner in which demographic considerations have been taken into account in determining that number." The connection between immigration levels and demographics was thus clearly present in the minds of the drafters of the Act. The "fertility rate" is a hypothetical figure which represents the total number of children born on average to each woman. Canada's fertility rate fell from 3.8 in 1960 to 1.65 in 1987, before beginning to rise slowly to about 1.7 in 1992. The rate has been stable at approximately 1.6 for the last few years. Replacement level for Canada is considered to be 2.1 children per woman. The last year that this level was achieved was 1971.

At the same time, the population is aging. Currently, approximately 11% of the population is over 65 years of age. By 2021, that figure will have risen to approximately 18.5%

and by the middle of the next century some 23.3% of the population of Canada will be over 65. These facts have led some commentators to call for vastly increased immigration to bolster Canada's population and smooth out our age imbalances.

Broad demographic questions were addressed by the Review of Demography and Its Implications for Economic and Social Policy, begun in May 1986 by the federal government under the auspices of Health and Welfare Canada. Its report, *Charting Canada's Future*, was released in December 1989. The Minister's Levels Report of October 1990 downplayed the demographic argument for immigration, noting that *Charting Canada's Future* "indicated that current and planned immigration levels may have a modest effect in slowing down the projected longer-term decline in Canada's population, but would have little effect on the changing age structure of our society." The amendments to the Act made by Bill C-86 indeed eliminated the specific reference to "demographic considerations" in relation to levels planning, although a reference remains in section 3(a), which concerns the objectives of immigration policy.⁽³⁾

D. Finding the Right Immigration Level

The question of the "right" level of immigration for Canada at any given time is not an easy one to answer and can be very sensitive. Proposals to reduce levels can even lead to charges of racism, in view of the fact that such a high proportion of Canada's immigrants now come from non-traditional regions.⁽⁴⁾

The arguments against continuing the current policy of relatively high levels of immigration have been made by a number of commentators, including Daniel Stoffman in a paper prepared for the C.D. Howe Institute.⁽⁵⁾ Stoffman described Canada's current immigration policy as "the most radical immigration experiment in its history,"⁽⁶⁾ and pointed out that immigration to Canada is, per capita, double the rate of immigration to both Australia and the United States. He

(3) The complete list of objectives of the *Immigration Act* may be found in Appendix 4.

(4) In 1994, 57.6% of our immigrants came from Asia and the Pacific region, 13% from Africa and the Middle East and 9.3% from Central and South America, for a total of over 78%. In contrast, 17.3% of immigrants came from Europe and 2.8% from the USA. (Source: 1996 Annual Report to Parliament, Citizenship and Immigration Canada, p. 25.)

(5) *Toward a More Realistic Immigration Policy for Canada*, Backgrounder, C.D. Howe Institute, June 1993, 15 p.

(6) *Ibid.*, p. 3.

reviewed the economic data and concluded that the overall effect of immigration on the economy has been neutral and that recent immigrants have not fared as well economically as previous generations. Nor is immigration a solution to Canada's demographic problems, since it would take "massive" immigration to change the age structure of the population and, even then, there would not be a significant impact on the dependency problems that we will face in the future. Stoffman concluded that immigration should be reduced to 150,000 per year and become more selective in terms of the education and skill levels of immigrants.

Other commentators disagree with Stoffman. Even some of those that do so, however, and who support continued high immigration levels, have suggested that the program needs rebalancing to place more emphasis on immigrants selected for the economic contribution they can make to Canada. A recent compilation of studies for the C.D. Howe Institute and The Laurier Institution, *Diminishing Returns, The Economics of Recent Immigration Policy*,⁽⁷⁾ suggests that recent arrivals have resulted in fewer economic benefits for Canada than their predecessors. The editor proposed a number of options to reverse this trend by emphasizing immigration for economic purposes. It is noteworthy that the current government is committed to that goal and somewhat reduced immigration levels from the higher levels of the early 1990s.

CATEGORIES OF IMMIGRANTS

The different classes or categories of immigrants fall into three broad components which exemplify the different purposes of immigration. These are:

- Social component - the family class;
- Humanitarian component - refugees, members of designated classes and special programs; and
- Economic component - skilled workers and business immigrants.

(7) Don DeVoretz, ed., *Diminishing Returns, the Economics of Recent Immigration Policy*, Policy study 24, C.D. Howe Institute, Laurier Institution, 1995.

A. Immigration for Social Purposes - The Family Class

One of the objectives of the Act is "to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad." Family class immigration reached a high of 110,563 in 1993 before beginning to decline. The range for 1996 was established at 78,000-85,700, although there were significantly fewer arrivals than that; the 1997 projections reflected that fact. The relationships designated as part of the family class are found in the regulations and in the following table.

Sponsors must be at least 19 years of age, either Canadian citizens or permanent residents, and living in Canada. They must agree to provide financial support for their relatives for up to 10 years and must demonstrate that they have sufficient resources to fulfil their commitments by meeting the low income cutoff figures established by Statistics Canada and published in the Manual. This requirement does not apply to spouses and dependants.

Members of the Family Class

- spouses
- unmarried sons and daughters under 19 years of age, or 19 years of age or more who are dependent on their parents⁽⁸⁾
- parents, grandparents
- brothers, sisters, nephews, nieces or grandchildren if they are: orphaned, unmarried and under 19
- fiancé(e)s
- children under 19 intended for adoption⁽⁹⁾
- any relative if the sponsor is alone in Canada and has none of the above family members to sponsor

(8) Prior to July 1988, children were required to be under 21 at the time of application for a visa. In July 1988, the family class was expanded to include all unmarried sons and daughters (and their children); in 1992, the regulations were changed again so that to be included in the family class, children had to be under 19 or dependent (narrowly defined) on their parents. This change was introduced in order to reduce the unexpectedly high demand created by the change in July 1988.

(9) Prior to 1 February 1993, children intended for adoption were required to be under 13 years of age. With the raising of the age, provisions designed to counter immigration abuse were also added.

A relative described in the above list will be entitled to become a permanent resident of Canada providing that the statutory criteria relating to health and good character are met. No criteria relating to education, language or employment skills apply to members of the family class.

With the introduction of the immigration plan for 1995 - 2000, a number of changes and announcements were made with regard to the family class. First, the government divided the family class into two separate categories: "immediate family" (spouses, fiancé(e)s, and dependent children), and parents and grandparents. It announced that the size of the latter category would be controlled in order to achieve a better balance between family and economic immigrants, although no changes have been made to date. This potential policy shift was first signalled in 1992, although no action has been taken to date.

A significant change in how the "family class" is computed was made in the 1995 plan. In prior years, all family members sponsored from abroad after the landing of the sponsor in Canada were counted as family class. Since 1995, the sponsored family of refugees have been counted in the separate "refugee category" and the sponsored family of live-in caregivers are included in the "other" category. Thus, comparisons with the size of the family class in past years will be invalid unless these changes are taken into consideration.

In the outline of its plans for the current five-year period, the government also responded to concerns that Canada's social welfare system was being stressed by a significant number of sponsorship breakdowns. A study conducted in the Toronto area estimated the sponsorship breakdown rate to be 14%. Projecting this nationally (which may or may not be valid) would give a total welfare cost of close to \$700 million in 1993. In response to this finding, the government announced that the sponsorship agreement would be redesigned to clarify the obligations and assist enforcement, and that more realistic financial criteria for sponsors would be developed. There was a suggestion that a sponsorship bond might be introduced to ensure that if family class immigrants were forced to draw on public assistance, the money could be recouped from sponsors; however, this idea proved very controversial and was ultimately dropped. The proposal to raise the financial criteria for sponsors was also controversial and the government has not proceeded with it.

B. Immigration for Humanitarian Purposes - Refugees and Those in Refugee-like Situations

The Act recognizes the need "to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted." "Convention" refugees are those who meet the definition in the Act, which is essentially the same as in the *United Nations Convention Relating to the Status of Refugees*. To be a Convention refugee, a person must be outside his or her country of nationality (or last permanent residence if the person has no nationality) and "by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion" be unwilling or unable to return to that country.

Designated Classes are established by regulation to serve the needs of people who are persecuted or displaced but who may not meet the strict definition of Convention refugee. They have assisted individuals from Indochina, El Salvador, Guatemala and a number of other countries.

From time to time, Canada also has special programs for people in distress because of natural disasters, wars, revolutions and so on, even though those people may not be Convention refugees or members of Designated Classes. These programs have assisted relatives of Canadian residents who applied from outside Canada as nationals of El Salvador, Guatemala, Iran, Lebanon, Sri Lanka, and former Yugoslavia.

In December 1996, the Minister announced the creation of a broad class - the Resettlement from Abroad Class - to replace both *ad hoc* special measures for individual countries and the Designated Classes. It is intended that the new system will become effective on 1 March 1997.

1. Selection of Refugees Abroad⁽¹⁰⁾

As it struggled with the breakdown of the refugee status determination system within Canada in the late 1980s, the government stressed repeatedly that Canada has been

(10) For a detailed treatment of this topic, see Grant Purves, *Humanitarian Immigration and Canadian Policy*, Current Issue Review 80-10, available from the Research Branch of the Library of Parliament.

traditionally, and should remain, a country of resettlement.⁽¹¹⁾ This means that Canada chooses refugees at ports or refugee camps abroad, and is thus able to apply quotas to the various regions of the world, manage the numbers of arrivals, and control the financial implications that accompany government sponsorship.

The emphasis on resettlement has been attenuated in recent years. In 1991, the planned level of government sponsored refugees (13,000) was undersubscribed by over 5,000, and in 1992 by 6,700. The quota of 13,000 originally planned for 1993 was reduced to 10,000 in December 1992, with the tabling of the Levels Report for that year. Even so, fewer than 7,000 government-assisted refugees were landed. The Liberal government then adopted levels that corresponded more closely with actual landings.

Over the years, there have been a number of recurring criticisms of the overseas selection process. Some have charged that regional quotas and selection practices have shown an ideological bias in favour of those fleeing right wing regimes. Others charge that selection abroad can be inconsistent and arbitrary, that too much emphasis is placed on the ability of the refugee to settle successfully in Canada, that access to embassies is often restricted and that processing takes too long. Processing abroad, however, is much more diffuse and difficult to evaluate than the domestic system, which has received intense scrutiny in the recent past.

2. The Refugee Status Determination System in Canada⁽¹²⁾

During the 1980s, it had become apparent that the system for dealing with claims to refugee status made within Canada was inadequate for the job. It was procedurally cumbersome, very time-consuming, and permitted people to abuse it in order to gain additional time in Canada. Bill C-55, legislation to overhaul the system, was introduced in Parliament in May 1987 and received Royal Assent some 14 months later, amid continuing controversy. It came into force on

(11) Appendix 4 shows the numbers of government-assisted and privately sponsored refugees selected abroad from 1990 to 1995.

(12) For a more detailed examination of the history of this topic, see Margaret Young, *The Convention Refugee Determination Process in Canada: Its Reform*, CIR 86-26. For a fuller discussion of the current legislation, see *Canada's Refugee Status Determination Process*, BP-185E. Both papers are available from the Research Branch, Library of Parliament. The number of claims to refugee status in Canada since 1980 is found in Appendix 6.

1 January 1989. The system was further modified by the amendments made to the Act by Bill C-86 in 1993 and by Bill C-44 in 1995.

The refugee system must balance a number of factors. The law must embody the essence of the *Convention Relating to the Status of Refugees*, which Canada signed in 1969. This requires signatories not to return people in any manner whatsoever to the frontiers of territories where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group or political opinion.

At the same time, the law must be stringent enough to counteract the perception that Canada has lost control of her borders. Without control, the government fears that support for all immigration and refugee programs might be endangered. It is the government's view that control of the numbers of claimants is operationally essential as well, given the great number of potential claimants worldwide. Thus, deterring the arrival of new claimants in Canada and very expeditious treatment of those who do come are important goals of the government. Yet control cannot be achieved at the expense of the human rights of the individuals once they are in Canada; in 1985, the Supreme Court of Canada ruled that refugee claimants were protected by the *Canadian Charter of Rights and Freedoms*.

Not everyone may make a refugee claim in Canada. Eligibility criteria are applied by immigration officers who weed out:

- those who do not require the protection of Canada because they have been recognized as Convention refugees by another country, to which they can be returned;
- those who do not require the protection of Canada because they have come from a country on a list established by Cabinet of countries that comply with Article 33 of the Convention (non-return to countries of persecution);
- those who are making repeat claims without having been out of the country for 90 days;
- those already recognized as refugees by Canada; and
- those who are security risks, serious criminals or war criminals.

To date, no list of prescribed countries has been in place so the second eligibility factor has not been operational. The Governments of Canada and the United States are, however,

on the verge of signing an Agreement for allocating responsibility for determining claims made to them. This will permit Canada to make the U.S. a prescribed country to which it can return claimants pursuant to the Agreement.

Claimants denied access may apply for leave to apply for judicial review of the decision but may be removed from the country pending the review. Individuals not rejected at the access stage are referred for a hearing of their claim to the Refugee Division, which normally adjudicates the claim in panels of two members,⁽¹³⁾ both of whom must agree before a claim can be rejected.⁽¹⁴⁾ Clear positive cases may be expedited by proceeding before a panel of one member.

Those rejected by the Refugee Division may make an application for leave to apply for judicial review of their case on legal grounds to the Federal Court - Trial Division and are permitted to remain in the country until a final decision is rendered. Those accepted as Convention refugees are eligible for administrative procedures leading to permanent residence. Rejected refugee claimants whose lives would be threatened in their own country or who would suffer inhumane treatment may, in certain cases, be landed under the Post-Determination Refugee Claimants in Canada Class (PDRCC) and may also apply to stay in Canada on general humanitarian or compassionate grounds. Rejected claimants who have not been removed after three years are currently eligible to be considered for landing as part of the Deferred Removal Orders Class, although the government has announced that this class will be closed 1 March 1997. (Individuals who qualify for landing before that date will be allowed to apply for permanent residence notwithstanding the change.)

C. Immigration for Economic Purposes

One objective of the *Immigration Act* that has assumed prominence in recent years relates to economic development: "to foster the development of a strong and viable economy and the prosperity of all regions of Canada." A number of immigrants are thus chosen on criteria that

(13) Bill C-49, currently before Parliament, would reduce the normal quorum to one member.

(14) There are three exceptions to this rule: where a person has without valid reason destroyed identity documents in his or her possession; where the person has visited the country of claimed persecution since making the claim; and where the country of claimed persecution is on a list of countries prescribed by Cabinet that respect human rights. (This is separate from the list relating to eligibility; there is currently no list prescribed.) If both members of the Refugee Division agree that one of those circumstances exists, a negative decision by one of them means the claim is rejected.

are tied to Canada's economic needs for certain types of skilled workers, for job creation, and for investment capital. All of these immigrants may be called "independent immigrants," although entrepreneurs, and investors and the self-employed are usually now called "business immigrants," leaving the term "independent" for skilled workers and skilled workers assisted by relatives in Canada.

1. Entrepreneurs

The purpose of the entrepreneur program is to attract as immigrants experienced business people who will establish or purchase a commercial enterprise which will provide employment for one or more Canadians and make a significant contribution to the economy. The entrepreneur must intend and have the ability to be directly involved in the venture. The provinces are actively involved in the program and the intended province of destination must approve the business proposal before the immigrant is accepted.

The entrepreneur program has been the subject of criticism on a number of grounds. Perhaps the most important of these is that there is insufficient monitoring of the program to ensure that the stated intentions of the entrepreneurs are actually carried out. It appears that a significant number of business proposals have never been implemented, or are implemented in a manner different from that approved by the province and the visa officer. It is noteworthy that figures for capital transfer and job creation achieved by the program are based on the declared intentions of the immigrants, not on the results of their actions following arrival in Canada.

Within the last few years, universal conditions have been introduced to all entrepreneur visas, requiring immigrants to fulfil program requirements within two years. Reports on progress are required every six months and should facilitate the removal from the country of those who do not comply.

Another criticism of the entrepreneur program has been that a number of applicants who may have been rejected by federal authorities are subsequently accepted by Quebec. This would pose no problem in itself except that apparently some two-thirds of those entrepreneurs leave Quebec for other provinces soon after arrival. In this manner, the provisions for approval by the province of destination are circumvented.

One commentator has noted that the fact that 70% of entrepreneurs intend to live in Toronto, Montreal or Vancouver aggravates the existing regional disparities in Canada. It will be recalled that the objective from the Act quoted above referred to the economy and prosperity of all

regions in Canada. Certain provisions of the investor program discussed below are aimed at this problem.

Finally, the entrepreneur program is open to the charge that Canada is selling visas to those rich enough to purchase them, although to a lesser extent than is the case with the investor program. Effective monitoring to ensure implementation of stated intentions would no doubt be at least a partial answer to those criticisms.

2. Investors

The current investor category of business immigrant came into effect on 1 January 1986 and was frozen as of 1 November 1994, pending development of a new program.⁽¹⁵⁾ Immigrant investors will continue to qualify to come to Canada under the program as described below, but no new businesses or funds are being approved and extensions of existing offerings are not permitted, although provincially sponsored funds have continued to operate.

The program permits the entry as permanent residents of people who have operated or controlled a successful business or commercial undertaking, who have significant net worth and who are willing to invest a minimum amount of money in a medium or small business or commercial venture in Canada; there is no requirement that they participate in the active management of a business.

Provinces are divided into two tiers, for the purpose of the program; Tier III investments may be made in any province.

Tier I Investors in Tier I provinces must have a net worth of \$500,000 and must invest at least \$250,000 (non-guaranteed and irrevocable) for five years. Tier I provinces are those which have not received a significant number of business immigrants to date (less than 10% of business immigrants in the preceding year) (all provinces except British Columbia, Ontario and Quebec);

Tier II Those with a net worth of \$500,000 who invest at least \$350,000 (non-guaranteed and irrevocable) for five years in any other province; and

Tier III Those with a net worth of \$700,000 who invest at least \$500,000 in any province (irrevocable) for five years and who are entitled to receive third party guarantees.

(15) Quebec operates its own program.

As noted above, the investor program has been subject to the criticism that Canada is selling visas. Criticism that the program exacerbates regional disparities, because most investors reside in Montreal, Toronto or Vancouver, regardless of the province of investment, diminished following the introduction of the Tier system in April 1988. Currently, the "have-not" provinces receive approximately one-half of all investments under the program.

Significant problems with the program have developed within the last few years. The lack of enforcement and monitoring became apparent in the ongoing revelations of a number of improprieties in the administration of immigrant investor funds in the Western provinces; these revelations have led to private lawsuits and some have resulted in criminal charges. Other defects in the program included its complexity, and allegations of unfair competition. The government hopes to introduce a new program in July 1997.

In the meantime, the amendments to the Act made by Bill C-86 gave the government a range of monitoring and enforcement tools, including the creation of new offences, intended to enforce compliance with the rules. Regulations pursuant to the Act were passed to give legal status to requirements of the program that were formerly administrative only. In addition, a Business Immigration Branch was created, headed by a Director General. It remains to be seen whether the Branch will have the resources and staff with sufficient expertise to monitor adequately the numerous funds and projects that remain available to immigrant investors.

3. Skilled Workers

The skilled worker category responds to Canada's need for immigrants who can contribute to the economy through their possession of skills and training in occupations for which there is a demand in this country. The immigrant selection ("points") system regulates their admission.⁽¹⁶⁾ This system is a mechanism designed to predict whether an independent immigrant has the potential to adapt successfully to Canada and be of benefit to this country socially and economically. It is an attempt to rationalize the selection process and to introduce a significant degree of objectivity into it.

(16) The points system also plays a role in the selection of business immigrants, but to a much smaller degree.

The points system is composed of nine factors,⁽¹⁷⁾ eight of which relate to the applicant as an individual. The following briefly summarizes these eight criteria:⁽¹⁸⁾

(i) Age - Individuals from 21-44 years of age receive the full 10 points in this category. Two points are deducted for each year under 21 or over 44. Applicants over 49, therefore, receive no points.

(ii) Education⁽¹⁹⁾ - non-completion of secondary school, 0 points; completion of secondary school, 5 points; attainment of a diploma or apprenticeship certificate from a college or trade school (provided at least one year of full-time classroom study was required), 13 points; completion of university degree, 15 points; completion of one or more advanced university degrees, 16 points.

(iii) Specific Vocational Training - This category gives points on a sliding scale depending on the nature of the formal training required for the applicant's occupation. The more complex the job training required, the greater the number of points. The full 18 points can only be achieved if over 10 years of preparation is required.

(iv) Experience - Points (to a maximum of 8) are given for job-related experience related to the skill level of the job in question. Even long experience in a low-skilled job will merit only 2 points, whereas if the specific vocational preparation time of a job is at least four years, maximum points can be earned for four years of experience.

(v) Occupational Demand - This category awards points to immigrants who possess skills in occupations that are in demand in Canada. Applicants must receive some points in this category or have arranged employment (see below) for their application to be considered. At one time, "demand" meant current demand and was assessed during surveys of job vacancies conducted by Statistics Canada. Now, the system targets occupations which have a more general, longer-term capacity to absorb new workers. The resulting general occupations list contains some 180 broad

(17) There is also a kinship bonus that applies to assisted relatives which will be discussed in the next section of the paper.

(18) See Appendix 6 for a summary list. Note that Quebec has its own points system. In November 1995 the Minister of Citizenship and Immigration announced proposed changes that would significantly redesign the system. The proposals were strongly criticized and the Department has not proceeded with them to date.

(19) Before August 1993, one point was awarded for each year of primary and secondary education successfully completed, to a maximum of 12.

occupational groups, with over 2,400 eligible occupations, each of which carries from 1 to 10 points.

(vi) Arranged Employment or Designated Occupation - Ten points are awarded to an applicant who has arranged employment in an area of Canada in which there is a shortage of people with the applicant's skills.

In May 1991, a list of designated occupations was introduced, reflecting occupations in particular demand in certain provinces. Applicants with those skills willing to settle in the applicable province receive 10 points. Currently, there are only a few designations.

(vii) Knowledge of French and English - Up to 15 points are available for fluency in official languages. In August 1993, the manner of awarding points for language was changed. Now, credits are awarded, which are then converted into points. For the official language that the applicant identifies as the strongest, the credits are: for the ability to speak, write or to read fluently - 3 credits for each ability; well - 2 credits for each ability; with difficulty - no credits. For the other official language, the credits are: for the ability to speak, write or read fluently - 2 credits for each ability; well - 1 credit for each ability; with difficulty - no credits.

Credits are converted into points as follows: 0-1 credits, 0 points; 2-5 credits, 2 points; 6-15 credits, the number of credits is the number of points. The effect of the changes is to penalize applicants who speak the official languages with difficulty or not at all.

(viii) Personal Suitability - Up to 10 points are available for personal suitability based on the visa officer's perception of an applicant's "adaptability, motivation, initiative, resourcefulness" and other similar qualities (or lack thereof). This is the only subjective criterion in the system.

A ninth factor in the points system is completely unrelated to the individual applicant. It is a control mechanism available to the government to assist in the management of the flow of immigrants by giving every applicant a set number of points out of 10. For example, if levels are undersubscribed in a given period, the points available under this demographic factor could be increased to as high as 10. On the other hand, if levels are oversubscribed, the points could be reduced to 3 or 4 or even zero.

Skilled workers without relatives in Canada must receive at least 70 points to be considered, although the visa officer can exercise discretion and pass (or fail) an applicant if, in the officer's opinion, the total points do not accurately reflect the ability of the immigrant to settle successfully in Canada in the economic sense.

4. Assisted Relatives

Assisted relatives are adult independent immigrants subject to the point system who receive five points if they have close relatives in Canada.⁽²⁰⁾ The requirement that relatives meet the low income cut off figures and sponsor the immigrants for a period of five years was eliminated early in 1993.

5. Provincial/Territorial Nominees

The Levels Report for 1996 created a new category entitled "Provincial/Territorial Nominees." The purpose of the category is to respond to the needs of individual provinces for immigrants to fill specified regional economic needs. The 1996 level was set at 1,000; no figure was specified for 1997. Although this category was included under the "economic component" of the 1996 plan, in 1997 it was inexplicably placed in the "other" immigrant category. Garment workers destined to Manitoba have benefited from this category.

D. Other Categories of Immigrants

1. Live-In Caregivers

The Live-in Caregiver Program (formerly called the Foreign Domestic Movement Program) responds to the need of Canadian working parents (and older or disabled individuals) for live-in childcare or domestic help. The program is unique. Successful applicants enter Canada technically as visitors with employment authorizations valid for a specific job. Many of the caregivers who apply to come to Canada under this program, however, are really immigrants, in that they wish to remain in Canada permanently. Unlike any other temporary workers, at the end of a two-year period of successful employment they are eligible to apply for permanent residence.

In April 1992, the program was revised so that all applicants were required to have completed the equivalent of a Canadian grade twelve education and have successfully completed six months of full-time formal training relevant to the position being applied for. The requirement for the ability to communicate adequately in English or French was continued. The revised two

(20) Relatives can be children, brothers or sisters, grandchildren, aunts or uncles, and nieces or nephews.

criteria proved very controversial and, indeed, the requirement of full-time training was modified in July 1993 by the incorporation of experience into the requirement. Now, applicants need either six months of training or twelve months of actual experience in the kind of caregiving work to be undertaken. The Department had found that most refusals under the program were arising from an inability to meet the training requirement; this was particularly so in Hong Kong and Singapore, where many Filipina applicants are well-educated and experienced but lack formal training.⁽²¹⁾

2. Humanitarian and Compassionate Landings and Special Categories

As mentioned earlier, the Minister may grant landing on humanitarian and compassionate grounds. Landing is also possible for individuals in certain other circumstances, such as under PDRCC, mentioned earlier.

THE ROLE OF THE PROVINCES IN IMMIGRATION

Section 95 of the *Constitution Act, 1867* gives the federal government and the provinces concurrent legislative powers over immigration. The provinces are limited in that any laws they may pass must not be "repugnant to any Act of the Parliament of Canada." Quebec has exercised this constitutional power and established its own Ministry for immigration in 1986. It maintains officers in a number of posts abroad to process the applications of immigrants who wish to come to Quebec.

The *Immigration Act* contains several provisions relating to the provinces. They must be consulted prior to the tabling of the Levels Report and on immigrant settlement and adaptation measures. The Act permits the Minister to enter agreements with any province "for the purpose of facilitating the formulation, coordination and implementation of immigration policies and programs." Eight provinces have entered such agreements with the Minister,⁽²²⁾ but the Canada-Quebec Accord, which came into effect on April 1991 (replacing the former Cullen-Couture Agreement), is by far the most extensive.

(21) Material filed by Employment and Immigration Canada with the Standing Committee on Labour, Employment and Immigration in response to a request on 6 May 1993.

(22) British Columbia and Ontario do not have immigration agreements with the federal government.

Under the Accord, Quebec's most significant role is with regard to independent immigrants, for whom Quebec has developed its own points system. Both the federal and provincial grids have many of the same features, with points for age, education, employment, specific vocational preparation and so on. The Quebec grid, however, rewards knowledge of French significantly more than knowledge of English. An applicant can receive up to 17 points for French and up to 6 points for English.

The Quebec grid also contains a number of factors not present federally. Spouses can boost applicants' points by up to 17 if they speak French or have an occupation for which there is at least an average demand in Quebec. As well, there are up to 8 points available for families with children.

Under the Canada-Quebec Accord, Quebec assumed control of all settlement and integration programs for immigrants destined to that province. Canada agreed to transfer money to Quebec for those programs: \$75 million for 1991-92, rising to \$90 million for 1994-95. After that time, the amount of money is set by means of a formula, but \$90 million is the minimum amount receivable.

SETTLEMENT

With a large proportion of immigrants to Canada coming from third world countries and often speaking neither English nor French, services to assist them to settle in and adapt to Canada became an important part of the immigration program. Some of these programs have been delivered by Citizenship and Immigration Canada itself, while most have been delivered by private sector organizations, funded by the Department.

The Department is currently implementing the Settlement Renewal Initiative, under which it intends to withdraw from the direct administration and delivery of federal settlement programs by 1 April 1998. The stated objectives of the initiative are to enhance the ability of communities to set funding priorities that meet local needs, to streamline the funding process and eliminate duplication and overlap, and to increase accountability for the expenditure of public funds.

The following is a brief description of current programs. (Note that Quebec operates its own integration programs.)

A. Immigrant Settlement and Adaptation Program - ISAP

ISAP provides funding to not-for-profit organizations and educational institutions that offer direct services to immigrants, largely refugees, to enable them to settle in Canada as fast as possible. Services include reception, counselling, information, translation and interpretation, and job placement. Expenditures on this program are expected to be approximately \$14.3 million in 1996-97.

B. Adjustment Assistance Program - AAP

The AAP provides money to government-assisted refugees for up to one year after their arrival. Prior to mid-1994, successful refugee claimants and independent immigrants in need also benefited from the program; indeed, individuals in those groups comprised almost half the number of recipients. People already receiving benefits were not, however, cut off when the eligibility rules were changed.

The need for assistance is assessed by subtracting the individual's basic costs from his or her available income and assets and applying the rates for welfare assistance which apply in the province of the applicant. Some \$45.8 million will be spent on this program in 1996-97.

C. Host Program

The Host Program, currently available to all immigrants, began as the Host Program for Refugee Settlement. It was an attempt to give government-assisted refugees some of the advantages of the increased social contacts and assistance enjoyed by privately sponsored refugees by matching them to host groups in various cities. Studies show that the settlement process is enhanced by such measures, particularly in the area of language skills. In 1996-97, approximately \$2.2 million will be spent on this program.

D. Immigrant Loans Program (ILP)

This program provides loans to assist refugees and other immigrants to come to Canada. The regulations set a limit on the loan fund of \$110 million. Convention refugees and

members of designated classes selected at posts abroad are given an interest-free period of from one to three years, depending on the size of the loan. All others pay interest on the loan.

E. Language Training

An ability to speak one of Canada's official languages is an extremely important part of an immigrant's ability to settle successfully in Canada. Language Instruction for Newcomers to Canada (LINC) is a broadly based program available to all immigrants, whether destined to the labour market or not. Expenditures of close to \$102 million are projected for LINC in 1996-97.

VISITOR VISAS

Visitors to Canada are people (other than Canadian citizens, permanent residents and holders of Minister's permits) who wish to enter Canada for a limited period of time. The category includes tourists, students and temporary workers. All visitors to Canada require a visa *except* those who are exempt under the regulations. The citizens of over 100 countries require visas to visit Canada and also merely to transit the country. Airlines are subject to substantial fines for transporting individuals without the required documents.

Visas are issued upon application at posts abroad, although a visa itself represents only pre-screening by the visa officer and does not guarantee admittance to the country. That decision is taken by the immigration officer at the port of entry, although visa holders denied entry in those circumstances may appeal to the Immigration Appeal Division of the Immigration and Refugee Board. Visitors who wish to stay longer than their visa permits may apply for an extension in Canada.

In assessing whether to issue a visa, the officer abroad must form an opinion as to whether the applicant is *bona fide* and will actually leave the country at the appropriate time. He or she must also screen applicants on security, criminal and health grounds. Certain visitors are required to undergo a medical examination before a visa is issued: visitors for longer than six months, those proceeding from certain designated areas of the world, workers whose employment will be of such a nature as to involve the public health, and so on.

There is no question that the visitor visa system is intended to function (and does function) as the country's chief defence against illegal immigrants and workers. The visa system is costly to operate and a visa is imposed only when immigration control problems develop in relation to arrivals in Canada from a specific country. Visa officers abroad normally operate by applying profiles of the kind of individuals not likely, in their view, to be *bona fide* visitors. For example, an unemployed, single, young male from a developing country may not be successful in his application for a visitor visa. In contrast, a well-established businesswoman in her fifties with property in her home country would be likely to encounter few difficulties.

Such "profiling" is no doubt an essential tool for visa officers, who must quickly process a great number of these applications (many posts offer same-day service), but it is undeniably a broad brush. Indeed, another word for "profiling" might be "stereotyping" and it can lead to the rejection of *bona fide* applications. For this reason, the system has been criticized as arbitrary; it may, in fact, prove difficult in individual cases to establish the reasons for rejection of an application.

The use of visitor visas has also been controversial because of its link with the refugee system. Once it became widely known in the 1980s that Canada's inland refugee determination system allowed completely open access and that determination of claims took considerable time (thus permitting claimants to remain in Canada and work until a decision was reached), it became a relatively simple matter for a person from a country for which no visa was required to come to Canada and make a claim, thereby circumventing normal immigration procedures.⁽²³⁾ The only way to stem this flow was to impose a visitor visa on the problem countries.

The visa system, however, makes no distinction between citizens of those countries producing genuine refugees attempting to flee oppression and those whose citizens are using the refugee system as a convenient way into the country.⁽²⁴⁾ Church groups and others have therefore long been critical of the requirement of visas for citizens of refugee-producing countries. On the

(23) Very few of the thousands of people who made these claims were ever deported; indeed, 24,406 were landed in 1986-88 as part of a clearance of the backlog. By the end of 1988, a new backlog of close to 100,000 had developed, the processing of which took over four years.

(24) Nor is any distinction made between genuine refugees and others with respect to airlines' liability to fines for carrying undocumented or improperly documented passengers.

other hand, government officials maintain that it is a legitimate government policy to apply visas whenever control problems arise and to deal with citizens of refugee-producing countries through normal refugee selection procedures abroad and special programs when needed.

Certain countries in the world, notably Australia and the United States, have a virtually universal visa system, although Australia exempts New Zealand and the United States exempts Canada from the requirement. (A U.S. pilot program also permits visa-free entry to the nationals of a number of other countries.) From time to time, especially when serious control problems develop, the suggestion is made that Canada should move to a universal system. In response to questions on this topic from parliamentarians in the late 1980s, the Department of External Affairs indicated that a detailed analysis of the cost of imposing a universal visa had never carried out, but that a preliminary, very rough analysis suggested that some 343 additional Canada-based visa officers would be required, costing \$86 million; the figure would undoubtedly be much higher now. Government policy remains that visas should be imposed only when there is a demonstrated need related to immigration control, including refugee movements.

APPENDICES

1. Annual Landings, 1962-1996
2. Immigration Plan, 1997
3. Objectives of the *Immigration Act*
4. Government-Assisted and Privately Sponsored Refugees, 1990-1997
5. Refugee Claims in Canada, 1980-1996
6. Immigration Selection ("Points") System



Appendix 1
Annual Landings, 1962-1996

1962	74,586
1963	93,151
1964	112,606
1965	146,758
1966	194,743
1967	222,876
1968	183,974
1969	161,531
1970	147,713
1971	121,900
1972	122,006
1973	184,200
1974	218,465
1975	187,881
1976	149,429
1977	114,914
1978	86,313
1979	112,096
1980	143,117
1981	128,618
1982	121,147
1983	89,157
1984	88,239
1985	84,302
1986	99,219
1987	152,098
1988	161,929
1989	192,001
1990	209,630
1991	206,417
1992	220,777
1993	254,321
1994	217,950
1995	212,270
1996 (projected)	199,000 - 205,000

Appendix 2**Immigration Plan, 1997**

Immigrant Category	Range
Skilled Worker	82,000 - 90,000
Business	20,000 - 23,000
Spouses, Fiancé(e)s and Children	35,000 - 40,000
Parents and Grandparents	23,400 - 26,200
Other	
- Live-in Caregiver Program	
- Special Categories	
- Humanitarian and Compassionate	
- Provincial/Territorial Nominees	
Total Immigrant	168,900 - 187,700
Refugee Category	Range
Government-Assisted	7,300
Privately-Sponsored	2,800 - 4,000
Refugees Landed In Canada and Dependants Abroad	14,000 - 18,000 2,000 - 3,000
Total Refugee	26,100 - 32,300
Total Immigrant and Refugee	195,000 - 220,000

Source: *Staying the Course, 1997 Annual Immigration Plan.*

Appendix 3
Objectives of the *Immigration Act*

PART 1
CANADIAN IMMIGRATION POLICY

Objectives

**Immigration
objectives**

3. It is hereby declared that Canadian immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada recognizing the need

- (a) to support the attainment of such demographic goals as may be established by the Government of Canada in respect of the size, rate of growth, structure and geographic distribution of the Canadian population;
- (b) to enrich and strengthen the cultural and social fabric of Canada, taking into account the federal and bilingual character of Canada;
- (c) to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad;
- (d) to encourage and facilitate the adaptation of persons who have been granted admission as permanent residents to Canadian society by promoting cooperation between the Government of Canada and other levels of government and non-governmental agencies in Canada with respect thereto;
- (e) to facilitate the entry of visitors into Canada for the purpose of fostering trade and commerce, tourism, cultural and scientific activities and international understanding;
- (f) to ensure that any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate on grounds of race, national or ethnic origin, colour, religion or sex;
- (g) to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted;
- (h) to foster the development of a strong and viable economy and the property of all regions in Canada;
- (i) to maintain and protect the health, safety and good order of Canadian society; and
- (j) to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity.

Appendix 4

Government-Assisted and Privately Sponsored Refugees (Chosen Abroad) 1990-1997

Year	Government Assisted		Privately Sponsored		Total Arrivals
	Level	Actual	Level	Actual	
1990	13,000	12,739	24,000	19,154	31,893
1991	13,000	7,678	23,000	17,368	25,046
1992	13,000	6,259	17,000	8,960	15,219
1993	10,000	6,904	9,000	4,719	11,623
1994	7,300	7,300	6,000	2,700	10,000
1995	7,300	8,014	2,700-3,700	3,255	11,269
1996	7,300	7,300*	2,700 - 4,000	3,200*	10,500*
1997	7,300	-	2,800 - 4,000	-	-

* Projected

Appendix 5

Refugee Claims in Canada, 1980-1996

Year	Number of Claims	Number of Claims decided by IRB	Positive Decisions by IRB (as % of all claims not abandoned or withdrawn)
1980	1,600		
1981	3,450		
1982	3,300		
1983	6,100		
1984	7,100		
1985	8,400		
1986	18,282		
1987	24,466		
1988	34,353		
1989	21,745	5,306	4,744 (76%)
1990	36,559	13,623	10,710 (70%)
1991	30,515	26,941	19,425 (64%)
1992	37,720	27,308	17,437 (57%)
1993	20,483	25,549	14,101 (55%)
1994	22,006	21,666	15,224 (70%)
1995	26,072	13,710	9,614 (70%)
1996	26,120	21,680	9,541 (58%)

Sources: Immigration and Refugee Board, News Releases, various years and *1995 The Year in Review*; Employment and Immigration Canada, *Facts and Figures: Overview of Immigration, 1994*.

Appendix 6
Immigrant Selection (“Points”) System

Factor	Maximum Units
Education	16
Specific Vocational Preparation	18
Experience	8
Occupational Demand	10
Arranged Employment or Designated Occupation	10
Age	10
Knowledge of French and English	15
Personal Suitability	10
Levels Control	10

Note: The pass mark for skilled workers is 70; the pass mark for assisted relatives is 65.







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